

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL H. MITCHELL,

Defendant.

Case No. 06-20067

Honorable John Corbett O'Meara

**ORDER DENYING
DEFENDANT'S MOTIONS TO REVIEW AND REDUCE SENTENCE**

This matter came before the court on defendant Paul H. Mitchell's motions to reduce sentence pursuant to 18 U.S.C. § 3582 and 28 U.S.C. § 994(o) and to review sentence under 18 U.S.C. § 3742 (two motions). The government filed a response. No reply was filed, and no oral argument was heard.

More than five years after the court imposed sentence, defendant Paul H. Mitchell filed two motions in an effort to reduce his 77-month sentence. Both motions seek a reduction based on the Sentencing Commission's decision to remove the two-point increase in criminal history points for defendants who committed their crimes within two years of being released from prison. The so-called "recency points" amendment, however, was not made retroactive by the Sentencing Commission and thus do not apply to Mitchell's sentence.

Likewise, Mitchell's reliance on 18 U.S.C. § 3742, which sets forth appellate jurisdiction for challenges to sentences, fails because he waived the right to challenge his sentence as part of his Rule 11 Plea Agreement and also because such a challenge is untimely. Therefore, the court will deny both of his motions based on § 3742.

In addition, the court will deny Mitchell's request for counsel, as the grounds upon which he seeks a reduction in his sentence are without merit.

ORDER

It is hereby **ORDERED** that defendant Mitchell's Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582 and 28 U.S.C. § 994(o) [Docket # 33]; Motion to Review Sentence under 18 U.S.C. § 3742 [Docket # 34]; and Motion to Review Sentence and Request for Counsel [Docket # 37] are **DENIED**.

s/John Corbett O'Meara
United States District Judge

Date: July 19, 2013

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, July 19, 2013, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager